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Appeal from Circuit Court, Goochland County.

Bill by John T. Snead and others against W. J. Atkinson and others. From a decree sustaining a demurrer to the bill, complainants appeal. Reversed and rendered.

Smith & Smith and *S. A. Anderson*, all of Richmond, for appellants.

Jos. P. Sadler and *Wm. M. Justis, Jr.*, both of Richmond, for appellees.

YATES *v.* LEY.

June 14, 1917.

[92 S. E. 837.]

1. Acknowledgment (§ 20 (2)*)—Certificate by Trustee—Validity.—Where a trustee in a deed of trust also took and certified the acknowledgment of the deed as a notary public, his certificate was void.

[Ed. Note.—For other cases, see Acknowledgment, Cent. Dig. § 106.* 1 Va.-W. Va. Enc. Dig. 109.]

2. Principal and Agent (§ 23 (5)*)—Evidence—Sufficiency.—In an action by the beneficiary against the trustee in a deed of trust for damages caused by loss of preference because of the invalidity of the deed of trust due to the trustee's act in certifying the acknowledgment as a notary public on the issue whether the trustee was the mortgagee's agent and bailee in negotiating and placing the loan, evidence held to support a verdict for the trustee.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. § 41.* 1 Va.-W. Va. Enc. Dig. 248, 249.]

3. Acknowledgment (§ 48*)—Impeachment—Notaries.—When a notary public acknowledges a deed within his jurisdiction and in good faith he acts judicially, and cannot be held liable in damages for any error made by him in the exercise of this function.

[Ed. Note.—For other cases, see Acknowledgment, Cent. Dig. §§ 241-243.* 1 Va.-W. Va. Enc. Dig. 111.]

4. Bailment (§ 13*)—Principal and Agent (§ 61 (2)*)—Liability for Neglect—Gross Neglect.—An agent or bailee acting without compensation and solely for the accommodation of the principal or bailor is liable only for gross neglect.

[Ed. Note.—For other cases, see Bailment, Cent. Dig. §§ 42-44; Principal and Agent, Cent. Dig. § 97.* 1 Va.-W. Va. Enc. Dig. 260; 2 Va.-W. Va. Enc. Dig. 227.]

5. Trial (§ 260 (9)*)—Instructions.—An instruction that if defendant trustee, without pecuniary compensation, solely for the accommoda-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tion of the plaintiff, undertook to and did procure the signatures of the mortgagor and wife to the deed of trust, and did take the acknowledgments of said mortgagor and wife thereto, and thereafter put said deed of trust, so signed and acknowledged, in the clerk's office for recordation, and did then, in pursuance of directions from plaintiff previously given, deliver, or cause to be delivered to the mortgagor, the check evidencing the loan secured by said deed of trust, and that said defendant was without gross negligence on his part in so doing, then verdict must be for defendant, was sufficiently covered by the given instruction that an agent or bailee acting without compensation and solely for the accommodation of the principal or bailor is liable only for gross neglect where there is nothing in the evidence or contentions to remove defendant's alleged agency from the general rule and bring it within the qualifications thereof relating to agents who hold themselves out as possessing special and peculiar skill.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 658.* 1 Va.-W. Va. Enc. Dig. 710.]

6. Appeal and Error (§ 1067*)—Review—Harmless Error.—Refusal of an instruction that any negligence of the plaintiff's attorney which concurred with or intervened after the negligence of the defendant does not relieve the defendant of his liability to plaintiff for her loss proximately caused by a negligent act of his, and even if the attorney was negligent, and his negligence contributed to the plaintiff's loss, if the negligence of the defendant was the efficient cause of the loss, the defendant is liable for the full amount, if conceded to be correct as an abstract rule of law, was harmless error, where the instructions as a whole presented the intention of the parties in a full and fair manner, leaving no chance for the jury to find against plaintiff if they believed the negligence of the defendant was the cause of her loss.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4229.* 1 Va.-W. Va. Enc. Dig. 604.]

Error to Corporation Court of Danville.

Action by Augusta Yates against J. M. Ley. Judgment for defendant, and plaintiff brings error. Affirmed.

A. M. Aiken and *Malcolm K. Harris*, both of Danville, for plaintiff in error.

Wm. Leigh and *Eugene Withers*, both of Danville, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.